

§ 366.5

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or waiver or fails to conform with any material facts or representations presented in its submittals to the Commission, such person may no longer rely upon the exemption or waiver.

(2) The Commission may, on its own motion or on the complaint of any person, revoke the exemption or waiver granted under § 366.3(a) or paragraphs (b) or (c) of this section, if the person fails to conform to any of the criteria under this part for exemption or waiver.

[Order No. 667–A, 71 FR 28457, May 16, 2006, as amended by Order 699, 72 FR 45326, Aug. 14, 2007]

§ 366.5 Allocation of costs for non-power goods and services.

(a) *Commission review.* In the case of non-power goods or administrative or management services provided by an associate company organized specifically for the purpose of providing such goods or services to any public utility in the same holding company system, at the election of that holding company system or a state commission having jurisdiction over the public utility, the Commission shall review and authorize the allocation of the costs for such goods or services to the extent relevant to that associate company. Such election to have the Commission review and authorize cost allocations shall remain in effect until further Commission order.

(b) *Exemptions.* Paragraph (a) of this section shall not apply to any holding company system whose public utility operations are confined substantially to a single state. For purposes of this section, a holding company system will be deemed to have its public utility operations confined substantially to a single state if the holding company system derives no more than 13 percent of its public utility revenues from outside a single state. A holding company system or state commission may, pursuant to this subsection, seek a Commission determination that a holding company's public utility operations are confined substantially to a single state by filing a petition for declaratory order pursuant to § 385.207(a) of this chapter. Any holding company system or state commission seeking such a determination shall bear the burden of

demonstrating that such determination is warranted.

(c) *Other classes of transactions.* Either upon petition for declaratory order or upon its own motion, the Commission may exclude from the scope of Commission review and authorization under paragraph (a) of this section any class of transactions that the Commission finds is not relevant to the jurisdictional rates of a public utility. Any holding company system or state commission seeking to obtain such a determination under this subsection shall file a petition for declaratory order pursuant to § 385.207(a) of this chapter. Any holding company system or state commission seeking such an exemption shall bear the burden of demonstrating that such an exemption is warranted.

(d) Nothing in paragraphs (a)–(c) of this section shall affect the authority of the Commission under the Federal Power Act (16 U.S.C. 791 *et seq.*), the Natural Gas Act (15 U.S.C. 717 *et seq.*), or other applicable law, including the authority of the Commission with respect to rates, charges, classifications, rules, regulations, practices, contracts, facilities, and services under the Federal Power Act and Natural Gas Act, and with respect to access to books and records under the Federal Power Act and Natural Gas Act.

§ 366.6 Previously authorized activities.

(a) *General.* Unless otherwise provided by Commission rule or order, a person may continue to engage in activities or transactions authorized under the Public Utility Holding Company Act of 1935 prior to the effective date of the Public Utility Holding Company Act of 2005, February 8, 2006, until the later of the date such authorization expires or December 31, 2007, so long as that person continues to comply with the terms of such authorization. If any such activities or transactions are challenged in a formal Commission proceeding, the person claiming prior authorization shall be required to provide at that time the full text of any such authorization (whether by rule, order, or letter) and the application(s) or pleading(s) underlying such authorization (whether by rule, order, or letter).

(b) *Financing Authorizations.* Holding companies that intend to rely on financing authorization orders or letters issued by the Securities and Exchange Commission must file these orders or letters with the Commission within 30 days after the effective date of the Public Utility Holding Company Act of 2005, February 8, 2006; any reports or other submissions that, pursuant to such financing authorizations, previously were filed with the Securities and Exchange Commission must instead be filed with the Commission, effective February 8, 2006. For the purposes of this section, compliance with the terms of such financing authorizations includes the requirement to notify the Commission of any financing transactions that a holding company engages in pursuant to such financing authorization.

§ 366.7 Procedures for obtaining exempt wholesale generator and foreign utility company status.

(a) *Self-certification notice procedure.* An exempt wholesale generator or a foreign utility company, or its representative, may file with the Commission a notice of self-certification demonstrating that it satisfies the definition of exempt wholesale generator or foreign utility company (including stating the location of its generation); such notices of self-certification must be subscribed, consistent with § 385.2005(a) of this chapter, but need not be verified. In the case of exempt wholesale generators, the person filing a notice of self-certification under this section must also file a copy of the notice of self-certification with the state regulatory authority of the state in which the facility is located, and that person must also represent to this Commission in its submittal with this Commission that it has filed a copy of the notice of self-certification with the state regulatory authority of the state in which the facility is located. Notice of the filing of a notice of self-certification will be published in the FEDERAL REGISTER. Persons that file a notice of self-certification must include a form of notice suitable for publication in the FEDERAL REGISTER in accordance with the specifications in § 385.203(d) of this chapter. A person fil-

ing a notice of self-certification in good faith will be deemed to have temporary exempt wholesale generator or foreign utility company status. If the Commission takes no action within 60 days from the date of filing of the notice of self-certification, the self-certification shall be deemed to have been granted; however, consistent with section 32(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z-5a (c)) any self-certification of an exempt wholesale generator may not become effective until the relevant state commissions have made the determinations provided for therein if such determinations are necessary (if such determinations are not necessary, the notice of self-certification should state so). The Commission may toll the 60-day period to request additional information, or for further consideration of the request; in such cases, the person's exempt wholesale generator or foreign utility company status will remain temporary until such time as the Commission has determined whether to grant or deny exempt wholesale generator or foreign utility company status; however, consistent with section 32(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79z-5a (c)), any self-certification of an exempt wholesale generator may not become effective until the relevant state commissions have made the determinations provided for therein if such determinations are necessary (if such determinations are not necessary, the notice of self-certification should state so). Authority to toll the 60-day period is delegated to the Secretary or the Secretary's designee, and authority to act on uncontested notices of self-certification is delegated to the General Counsel or the General Counsel's designee.

(b) *Optional procedure for Commission determination of exempt wholesale generator status or foreign utility company status.* A person may file for a Commission determination of exempt wholesale generator status or foreign utility company status under § 366.1 by filing a petition for declaratory order pursuant to § 385.207(a) of this chapter, justifying the request for such status; however, consistent with section 32(c) of the Public Utility Holding Company Act of